



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-1071]

RIN 1625-AA00

Safety Zone; Monongahela River, Charleroi, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters between mile 40.5 and mile 42.5 on the Monongahela River. The safety zone is needed to protect construction workers and vessels transiting the area from the hazards associated with demolition operation being conducted on a guard wall upstream of Lock and Dam 4 near Charleroi, PA. Entry into, movement within, and departure from this Coast Guard Safety Zone, while it is activated and enforced, is prohibited, unless authorized by the Captain of the Port Pittsburgh or a designated representative.

DATES: This rule is effective in the CFR on [INSERT DATE OF PUBLICAITON IN THE FEDERAL REGISTER] through 5:00 p.m. on March 1, 2013. This rule is effective with actual notice

for purposes of enforcement at 7:00 a.m. on January 9, 2013. This rule will remain in effect through 5:00 p.m. on March 1, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-1071. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MSTC Chris Blank, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone (412) 644-5808 ext. 2108, e-mail Christopher.L.Blank@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS                      Department of Homeland Security

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice for this event on January 3, 2013 which does not allow for the NPRM process. After full review of the event information and location, the Coast Guard determined that a safety zone is necessary. Publishing a NPRM would be impracticable and would unnecessarily delay the immediate action that is needed to protect the public from the possible hazards associated with demolition operation being conducted on a guard wall upstream of Lock and Dam 4 that will occur in Charleroi, PA. Delaying the demolition operation to provide a notice and comment period before

effecting this safety zone is also impracticable, as it would impede the flow of commercial river traffic and interfere with contractual obligations based on the demolition operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Providing 30 days notice would unnecessarily delay the effective date, be impracticable, and contrary to public interest because immediate action is needed to protect the public from the possible hazards associated with demolition operation being conducted on a guard wall upstream of Lock and Dam in Charleroi, PA.

B. Basis and Purpose

The Joseph B. Fay Company has been contracted by the Army Corps of Engineers to conduct demolition operations that include four to seven explosive blasts between January 9, 2013 and March 1, 2013 to remove an 1100 foot section of guard wall upstream of Lock and Dam 4 in Charleroi, PA. This event poses hazardous conditions on the river and additional safety measures to ensure vessel and mariner safety are required in the form of a safety zone.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703;

50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone for all waters between mile 40.5 and 42.5 on the Monongahela River. Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Pittsburgh or her designated representative. Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh, or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at (800) 253-7465. This rule will become effective at 7:00 a.m. on January 9, 2013 and remain in effect until 5 p.m. on March 1, 2013, but will only be enforced during intermittent periods that will be announced by broadcast notices to mariners with as much advanced notice as possible. Due to the unpredictability of the Monongahela River, weather and river forecasts will be used to determine the most suitable conditions for demolition operations. Advanced notice will

be given to the maximum extent possible, but despite best efforts, the safety zone may be established with minimal notice when ideal work conditions are identified. The Captain of the Port Pittsburgh will inform the public and maritime industry through broadcast notice to mariners of the enforcement periods and changes to the safety zone and its enforcement.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this rule will be effective from January 9, 2013 until March 1, 2013, unless demolition operation are completed sooner, it will only be enforced for a limited time periods

during days scheduled for demolition operations. By enforcing this safety zone for limited periods of time throughout the effective period, marine traffic will not be significantly impacted. Entry into or passage through the safety zone will be considered on a case-by-case basis by the Captain of the Port Pittsburgh or designated representative. Notification of, and changes to, the enforcement period will be made via broadcast notice to mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit that portion of the waterways

between mile 40.5 and mile 42.5 on the Monongahela River during the enforcement period. This safety zone will not have a significant economic impact on a substantial number of small entities because the enforcement periods will be for a limited duration, less than two hours, intermittently throughout the effective period.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not



retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-1071 to read as follows:

§165.T08-1071 Safety Zone; Monongahela River, Charleroi, PA.

(a) Location. The following area is a safety zone: All waters from mile 40.5 and 42.5 on the Monongahela River.

(b) Effective date. This rule is effective from 7 a.m. on January 9, 2013 until 5 p.m. on March 1, 2013.

(c) Periods of enforcement. This rule will be enforced intermittently during the effective period when demolition operations are being conducted on a guard wall upstream of Lock and Dam 4. The timing of demolition operations is dependent on contractor availability, river forecast, and observed weather. The Captain of the Port Pittsburgh will inform the public of the enforcement periods and any changes through broadcast notice to mariners.

(d) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port

Pittsburgh.

(2) Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

Dated: January 8, 2013

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Lindsay N. Weaver  
Commander, U.S. Coast Guard  
Captain of the Port, Pittsburgh

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